



National Guarantor for the Rights of Persons Detained or Deprived of Liberty



National Preventive Mechanism under the OPCAT

The National Guarantor in the context of Covid-19 outbreak

May 1, Labour Day

Prisons

Today, before reporting about prisons for adults, we would like to say goodbye to the Head of the Penitentiary Administration Department, Francesco Basentini, who, after having managed this complex world through such a difficult time, has resigned from his post.

The National Guarantor would like to thank Basentini for his being always disposed to dialogue and information sharing, also in relation to matters and in periods in which choices made by the prison service may have shown the National Guarantor and the Head of the Department standing on two different positions. The complexity of the prison environment is in its being characterised, on one hand, by the different staff and culture that work in it, and on the other, by the lack of homogeneity in the recipients of their activities — who show side-by-side mere social minorities and organised crime exponents. It requires a strong managerial leadership alongside with proximity to the persons who daily work in this difficult context and it deserves constant attention to make it possible that fundamental rights and security are never to be seen as opposites. The National Guarantor is confident that the choice for the next Head of Department is taking account of this perspective. It will ensure, moreover, its careful, cooperative and watchful institutional commitment, right from the beginning.

To date, 53,187 is the number of persons behind bars. The downward trend continues; however, the whole system is in need of a stronger push so to create sufficient health care structures capable to tackle any escalating drift of the infection. Today, the number of cases tested positive is still contained and manageable: 159 cases among prisoners and 215 among staff. However, cases among prison population are increasing.

Unfortunately, it is to be recorded among the victims a 54-year-old offender at the "San Paolo" hospital in Milan. He was held in pre-trial detention in Milan "San Vittore" prison until April 12, when he showed Covid-19 symptoms and was sent to the civil hospital, being formally released. Any evaluation on the number of prisoners infected should also take in consideration those who, having been released, are not included in the daily statistical data. Nonetheless, they should be regarded in the complex problem of the development of the contagion in prisons.

According to the latest data provided (April 29), 2,810 prisoners have been placed on home detention, out of which 704 are subject to electronic monitoring. These cases have nothing to do with the concerns raised after the release of some high-risk prisoners much emphasised by the media. In this regard, the National Guarantor reminds that already in 2017, in a Report sent to the Prison Administration after a regional visit to Sardinia (then published on its website), it highlighted "the need to open at least one Intensive Healthcare Unit (Sai) in the Region [Sardinia] which could carry out time-limited hospital treatments to prisoners held in high security wards or subjected to the 41-bis prison regime, taking into consideration its structural features". To this end, it made the following Recommendation (knowing that

in Sardinia, at that time, there were 520 and 90 prisoners respectively placed under high and maximum security regime (the so-called '41-bis regime'): «The National Guarantor recommends the Regional Prison General-Directorate to urgently provide prison population with an Intensive Healthcare Unit (Sai) in order to meet the medical needs of all people detained in the Region, including those who are placed under high and maximum security regime pursuant to article 41-bis of the Prison Act. The implementation of said unit should be possible by signing a protocol with the regional health service (Ats). The National Guarantor asks to be promptly informed both of the collaboration with the health authorities and of the consequent agreed deadlines for solving the problem». Unfortunately, no response from the Administration followed up.

Again, in a thematic report on the maximum security regime (the so-called '41-bis regime'), the National Guarantor observed how much could have been difficult to transfer a person detained in high or maximum security regime in need of urgent medical treatment if no dedicated Intensive Healthcare Unit was present in the region to protect their health and safety. In the report, it was written "it is like in Sardinia, where no Intensive Healthcare Unit is provided to prisoners. The once effective Unit in Sassari prison — originally powered up for this specific group of prisoners — has recently been transformed into a psychiatric observation centre and the only other unit of such a type in the Region is located in Cagliari-Uta prison and is reserved for the general prison population». The Department of Prison Administration replied to that report (on 29 January 2019, it was published on the Guarantor's website) regarding prisoners' transfers in general terms, noting the unlikelihood of the National Guarantor's hypothesis. For this reason, the National Guarantor's concern was expressed again in the report following the visit conducted in July 2019 where, recalling the Recommendation already formulated in 2017, we noted how the peculiar assignment of high security prisoners in Sardinia could risk determining the compression of a fundamental right, such as the right to health.

The National Guarantor acknowledged that not having addressed a problem reported for a longer time may have been decisive for the adoption of solutions that risk being perceived by the community as a sign of irreconcilability of health protection, access to care and guarantee of effective safety.

The scope of the concept of a right to health and its protection that should not be restricted to mere access to care, due to its essential overall dimension, is a topic of reflection on which the National Guarantor is going to launch an in-depth study.

From the region of Sardinia, the National Guarantor would like to get the positive message from the Sassari University Centre, which informs about the first oral exam being carried out via Skype by a student prisoner of the University of Sassari who got full marks for his philosophy of language exam. This single success is linked to the message that, when the objective is to make prison life most similar to the outside world, there are promising pathways to follow for getting satisfaction by the many students, teachers and to all those who contribute to make education possible behind bars. On these issues, the National Guarantor has recently made an appeal to the Minister of Education and to the Minister of Justice, also based on the request received from many teachers who have committed their time and profession to prisoners. The circular note 0130438 of April 21 by the Director-General for Prisoners and Treatment of the Prison Department is in line with this approach and marks a step forward so that this aspect too can live a phase 2 in the emergency context, after the abrupt interruption occurred last March. The task remains to apply it extensively and consistently with the commitment theoretically affirmed several times, to ensure that culture is the engine of that re-education of which the Constituent speaks.

Migrant people

As part of the deprivation of freedom of migrant people, the number of foreign citizens detained within the immigration Removal Centres (CPRs) continues to record a downward trend with a total of 229 persons held on April 30 (as announced some days ago, now the Caltanissetta CPR is actually empty).

Still, the highest number of people held in CPR has been registered in Turin, with 71 third-country nationals (it has a total capacity of 107 places), while the Rome-Ponte Galeria CPR is currently housing 31 men and 6 women, with a total capacity of 250 places.

It is worth examining the figures of those entering/exiting CPRs: in Ponte Galeria and Palazzo San Gervasio [Potenza] have actually decreased the number of people there held, respectively from 93 to 37 and from 33 to 17. Less sensible drops have occurred in Bari CPR (from 12 to 8), in Brindisi (from 19 to 11) and, as said, in Turin. Macomer CPR has been stable with a decrease of 8 persons (from 49 to 41). The only increase occurred in Gradisca d'Isonzo CPR [Gorizia], which went from 43 to 44.

On the other hand, the number of those subjected to precautionary quarantine measures rose as they have just arrived to Italy or have come into contact with cases tested positive for coronavirus.

With regard to such measures imposed on new arrivals, yesterday the hotspot in Lampedusa was housing 116 persons — they have all ended their quarantine and are therefore waiting to be transferred. The hotspot in Pozzallo [Ragusa], after the transfer of 50 persons, has recorded the arrival of 100 migrants from Lampedusa who then have been quarantined.

Quarantine continues for 101 persons inside “Don Pietro” farm in Comiso (Ragusa), for 36 people quarantined in “Villa Sikania” hotel in Siculiana (Agrigento), for 56 persons, as communicated by the Prefecture of Agrigento, are held in “Casa del Gabbiano” (district Ciavolotta – Agrigento). To these data, 183 foreign nationals placed in quarantine on board the ship “Raffaele Rubattino” moored one mile off the port of Palermo are to be added.

The National Guarantor is paying attention to reception places which, although not formally considered as places of deprivation of liberty, could, at least temporarily, become such, based on how the imposed health measures are implemented. The National Guarantor recalls that the necessary healthcare measures adopted can never be transformed into an indistinct deprivation of liberty, even of people who have had no contact with those tested positive.

The international networking

The National Guarantor participated last Monday in the workshop on “Prison complaint procedures”, carried out as part of the “*Working towards harmonized detention standards in the EU - the role of NPMs*” project, led by the consortium of associations composed of the Hungarian Helsinki Committee, the Associazione Antigone, the Bulgarian Helsinki Committee and the Ludwig Boltzmann Institute.

The meeting, initially expected to take place in Budapest, was launched online due to the Covid-19 emergency. However, NPMs from Italy, Austria, Romania, Portugal and Hungary participated in the webinar, together with a representative of the Subcommittee on the Prevention of Torture (Spt), which coordinates in Geneva the implementation of the UN Optional Protocol for the prevention of torture (OPCAT). The webinar was attended by some representatives from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and from the Association for the Prevention of Torture (APT), the Geneva driver on oversight activities relevant to these issues at international level.

The National Guarantor — which, it is always worth remembering, is designated as the Italian NPM — participated with its National and International Studies and Networking unit. A significant and appreciated contribution given the strong consistency of the *corpus* of complaints that the National Guarantor receives from prisoners, mostly through their relatives, but also from lawyers, associations, sometimes from prison staff and even, as it happens, from the Supervisory Judges. The latter typology of complaints is the most problematic and raises concerns on an aspect which is disregarded, though too often debated in conferences: the timely implementation of the provisions established by the Supervisory Justices even before procedures shall resort to the so-called “compliance and enforcement proceeding”. The National Guarantor’s experience has been of great interest among participants and as well as the procedure it has carried out to deal with the huge number of cases received. For this reason,

the Guarantor has proposed to make the procedure implemented official with the local Guarantors/Ombudspersons, and share it with international partners.

Moreover, drafting recommendations to be addressed to the Authorities concerned constitutes the core of the soft law activity the National Guarantor is implementing. It is based precisely on the ability to cherry-pick from the many individual cases those elements that can make understandable the critical aspects of the system. Nonetheless, it enables the NPM to set up standards, which are no longer theoretical but based on the concreteness of its 'observation' activity.

Last week the Icelandic Judge Robert Spano was elected new President of the European Court of Human Rights, succeeding judge Linos-Alexandre Sicilianos from Greece, ending his tenure on 18 May 2020. The National Guarantor wishes the newly appointed President all the best and rely on the productive collaboration which has always characterised the relationship between the National Guarantor and the European Court of Human Rights. From the highest latitudes and the lowest rate in prison overcrowding, the National Guarantor is expecting continuity in the rigorous analysis of cases involving all forms of deprivation of personal liberty and the desire to reduce their number to the effective mandatory needs.

The next bulletin will be released on Tuesday, May 5th.

The National Guarantor's twitter account is now active @GaranteLiberta

All issues of our Bulletin are available on the National Guarantor's website in the Covid-19 section (English translations included).